

Resolution No.:	<u>17-626</u>
Introduced:	<u>December 4, 2012</u>
Adopted:	<u>December 4, 2012</u>

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** APPLICATION NO. G-908 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Martin J. Hutt, Esquire, and Steven A. Robins, Esquire, Attorneys for the Applicant, 4825 Montgomery Lane, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account No. 07-00488086

**OPINION**

Application No. G-908, filed on October 14, 2011, requests reclassification of approximately 0.15 acres (6,525 square feet gross tract) of land in Bethesda from the R-60 Zone (Single-Family, Detached) to the TS-R Zone (Transit Station-Residential). The subject site is described as Lot 20, Block 13A in the Edgemoor Subdivision of Bethesda. The property is located at 4825 Montgomery Lane, on the east side of West Lane and the north side of Montgomery Lane, approximately half way between Arlington Road and Woodmont Avenue. The property is owned by Applicant, 4825 Montgomery Lane, LLC.

The site will be developed with a five-story, multi-family building, containing 4 residential units and 8 parking spaces. There will be approximately 15,519 square feet of residential floor area. Because there will be fewer than 20 dwelling units, Section 25A-5(a) of the Montgomery County Code does not require any moderately priced dwelling units (MPDUs), and none are planned for this project. Parking will be provided in a street-level garage which will accommodate eight vehicles. The proposed development will be subject to preliminary plan and site plan approval by the Planning Board.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission, and in an amended report dated August 31, 2012, Staff recommended approval of the application. Exhibit 37. The Montgomery County Planning Board considered the application on September 13, 2012, and by a vote of 4 to 0, recommended approval, with additional textual binding elements to which the Applicant has agreed. The Board's recommendation is contained in a letter to the Hearing Examiner dated September 19, 2012. Exhibit 42.

This application is supported by the City Homes of Edgemoor Homeowner's Association Inc. (CHEHA), which is composed of 29 privately owned residences located nearby on Montgomery Lane. *See* September 7, 2012, letter of Richard Lawch, President, Board of Directors of CHEHA. Exhibit 41. It is also supported by the Council of Unit Owners of the Edgemoor Condominium (CUOEC), as reported by Jon Weintraub, their Community Liaison. Exhibit 40. Mr. Weintraub did, however, express some concern about the adequacy of parking for the building.

The sole opposition comes from one neighbor, Susan Grudziecki, who wrote (Exhibit 22) and testified (Tr. 112-124) regarding her concerns about the adequacy of the proposed parking. Ms. Grudziecki's concern is that there will not be enough parking to accommodate visitors, contractors and delivery people; however, she conceded at the hearing that the amount of parking being provided is not a basis for denial of this application, given the applicable regulations. Tr. 123-124.

The hearing in this case was initially scheduled for March 12, 2012, but it was postponed twice at the Applicant's request (Exhibits 27, 29, 30 and 32). Subsequently, the Council adopted a zoning text amendment (ZTA 12-08), effective July 30, 2012, which eliminated a requirement for the TS-R Zone that parcels under 18,000 square feet had to have a single Development Plan in combination with an adjacent or confronting parcel in the TS-R Zone.

A public hearing in this case was thereafter noticed for September 21, 2012 (Exhibit 33), and it proceeded as scheduled. Five witnesses were called by the Applicant, and the only opposition testimony was given by Ms. Grudziecki. The record was held open until October 1, 2012, to allow the Applicant the opportunity to file a revised development plan in accordance with the recommendations of the Planning Board. The revised Development Plan was timely filed as Exhibit 60(a), and the record closed as scheduled on October 1, 2012.

The Hearing Examiner recommended approval on grounds that the proposed development satisfies the purpose and standards of the TS-R Zone; meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; will be compatible with development in the surrounding area; is consistent with the Bethesda CBD Sector Plan; and will be in the public interest.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated November 7, 2012, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The subject site is described as Lot 20, Block 13A in the September 27, 1928 Re-Subdivision Plat of Edgemoor in Bethesda (Exhibit 8).<sup>1</sup> It is within the Transit Station Residential District, as shown in the Bethesda CBD Sector Plan, approved July 1994. According

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<sup>1</sup> Technical Staff incorrectly lists the property as Lot 23 (Exhibit 37, p. 3); however, the rezoning application (Exhibit 2); the certified metes and bounds (Exhibit 6); the Subdivision Plat (Exhibit 8); and the State tax records all list the property as Lot 20.

to Technical Staff, the site is relatively flat, with a slight increase in grade along the front of Montgomery Lane. Exhibit 37, p. 3. It is rectangular in shape, with approximately 70 feet of frontage on Montgomery Lane and 95 feet of frontage on West Lane. It is developed with a two-story, single-family house with a detached one car garage. Exhibit 23(b), p. 1. Both structures will be razed under this application.

The gross tract area of the property is 6,525 square feet (including the land that is proposed for dedication), and the proposed net tract area is 6,217 square feet. As shown on the NRI/FSD<sup>2</sup> (Exhibit 12), which was approved by Technical Staff on March 9, 2011, the property is not located within a Special Protection Area or a Primary Management Area, and does not contain any forest, streams, steep slopes, buffers or flood plains. Applicant's engineer, Curt Schreffler, testified that there is one 32-inch, silver maple tree currently on the site. It meets the definition of a specimen tree, but it is in poor condition. Tr. 43-45. Technical Staff also confirms in its report that "The site does not contain any environmentally sensitive features as defined by the Planning Board's Approved Environmental Guidelines (2000)." Exhibit 37, p. 20.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends (Exhibit 37, p. 3) designating the surrounding area boundaries as:

Moorland Lane on the north, Woodmont Avenue on the east, Elm Street on the south and Arlington Road on the west. This area is defined as the Transit Station Residential Development Area in the Sector Plan.

The Hearing Examiner accepted this definition, as does the District Council.

Technical Staff describes the surrounding area very extensively in their report (Exhibit 37, pp. 6-7), and their complete description is quoted in footnote 5 of the Hearing Examiner's report. The critical fact about the Surrounding Area is that it is in the part of the Bethesda CBD Sector Plan recommended for the TS-R Zone, and the subject site is surrounded by uses in the R-60 and TS-R Zones (with just a smattering of R-10 zoned property to the southeast). The Central Business District of Bethesda is a half block to the east of the site, and commercial properties in the C-2 Zone are located just south of the Transit Station Residential District. One half block to the west of the site is Arlington Road, and across Arlington Road are properties in the R-60 Zone.

Immediately north of the subject site is property in the R-60 Zone which contains a single-family house being used as a commercial office. Immediately east of the subject site is the 10-story multi-family building known as the Edgemoor, which is in the TS-R Zone. Immediately northwest of the subject site, across West Lane, is the property known as Holladay at Edgemoor, which has been approved under the TS-R Zone in accordance with Local Map Amendment G-843 for 48 multi-family units and a building height that will vary from 4 to 6

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<sup>2</sup> The term "NRI/FSD" stands for "Natural Resource Inventory / Forest Stand Delineation."

stories. An application (LMA G-912) to rezone the property across West Lane (Lot 26), directly to the west of the subject site, was filed in conjunction with development previously authorized under LMA G-843, but the applicant has withdrawn the application for technical reasons, and plans to re-file, incorporating Lot 26 into the parcels approved under G-843. The plan in G-912 was to construct a 70-foot building in the TS-R Zone for 113 multi-family units on all the affected properties. Confronting the subject site, across Montgomery Lane to the south, is the City Homes Townhouse development, which includes four-story townhouses in the TS-R Zone.

The zoning and area planning history of the subject site was set forth in the Technical Staff report (Exhibit 37, p. 13):

1. 1954 - Countywide Comprehensive Zoning confirmed R-60 Zone
2. 1958 - Countywide Comprehensive Zoning confirmed R-60 Zone
3. F-736 - Adopted 8/15/72 reconfirmed R-60 Zone
4. G-20 - Bethesda CBD adopted 12/6/77 reconfirmed R-60 Zone
5. G-665 - Georgetown Branch Master Plan adopted 6/26/90, reconfirmed R-60 Zone
6. G-666 - Bethesda Chevy Chase Map Plan adopted 6/26/90, reconfirmed R-60 Zone
7. G-711 - Bethesda CBD Sector Plan, adopted 10/11/94 reconfirmed R-60 zone, recommended TS-R Zone

The Applicant seeks to reclassify the subject site to the TS-R Zone with the intent of building a transit-oriented project near a metro station. According to Applicant's managing member, Mimi Kress, Applicant's vision for the subject property is construction of a "high end" project of luxury condominiums, which will fit in well with the other projects in the neighborhood and is desirable within the market. Tr. 14. Applicant's architect, George Myers, initially explored a townhouse concept because there are townhouses as well as apartment buildings in the area, but he concluded that the proposed structure was the best type of building in the TS-R zone. Tr. 52-53.

The building will be five stories, with the first level being the garage and with four individual units above. Each unit will be approximately 2600 net square feet, and each will have a two car garage at grade level, yielding a total of eight parking spaces. Vehicular access into each of the four street-level garages will be provided from West Lane, but the primary pedestrian entrance and the entry lobby will be on Montgomery Lane. Tr. 14-15.

According to Applicant's architect, the building was designed with the primary rooms (*i.e.*, bedrooms, kitchen, living and dining rooms) facing Montgomery and West Lanes so that the front elevations would have "lots of glazing" and would look good since they are facing the public view. The stairs, elevators, trash room and trash chute are located on the two back sides (north and east). The building is designed primarily in a more traditional, residential style because that is typical of the neighborhood. It will have double-hung windows; a porch on the corner; and covered porches, which is a very residential feature, typical of a lot of older, smaller apartment buildings. The building will be articulated with a base, a middle and a top, which is a traditional way of detailing a residential building. Tr. 54-59. It will also have a green roof to aid in stormwater management. Tr. 119-120.

In Mr. Myers' expert opinion, the building will fit well in the neighborhood and will be compatible in terms of scale and massing with the adjoining Edgemoor, which is taller at 10 stories, and the City Home Townhouses, across Montgomery Lane, which is one story shorter. Tr. 56-57. Applicant will provide an enhanced streetscape along both West Lane and Montgomery Lane. A sidewalk for West Lane will be provided as part of this project, and there will also be street trees, special pavers and lighting. Tr. 72-73.

Technical Staff agreed that "The design of the building successfully communicates a "residential character" including features similar to those of the residential townhouses directly across Montgomery Lane." Exhibit 37, p. 16. Staff added that, "... the applicant has produced an innovative and creative building for this site that will blend well with existing and proposed residential developments nearby in terms of height and massing." Exhibit 37, p. 21. The Planning Board also found "that the rezoning application is consistent with the Sector Plan for the Bethesda Central Business District (CBD). The application will comply with the purposes, standards and regulations of the TS-R zone and the development as reflected on the Development Plan and further refined by the binding elements will be compatible with the surrounding area." Exhibit 42, p. 1.

The Hearing Examiner found that Applicant's development concept and vision for the project constitute a well-conceived plan for the development of the subject site, in accordance with the standards set forth in the Zoning Ordinance and the objectives of the applicable Sector Plan. Based on this record, the District Council agrees.

Pursuant to Code § 59-D-1.1, development in the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. The Development Plan, and the Land Use Plan that constitutes one of its primary parts, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The land use plan for the present zoning application, Exhibit 60(a), is titled "Development Plan (Land Use Plan)." The textual binding elements are printed on the development plan, and they are as follows:

TEXTUAL BINDING ELEMENTS:

1. Density: maximum number of dwelling units is 4.
2. Building height will be 5 floors:
  - a maximum height to the top of the roof is 65 feet.
  - a maximum height to the top of the parapet wall is 69 feet.
3. The primary pedestrian entrance to the proposed building shall be from Montgomery Lane.
4. The Applicant must provide dedication along the property's frontage on Montgomery Lane and along the property's frontage on West Lane.
5. Vehicular access to the property will be from West Lane.

The project will be developed in one phase, and will provide 10.6 percent public use space (659 square feet) and 23 percent active or passive recreation space (1,427 square feet), with final areas to be determined at site plan.

Applicant is proposing to dedicate one foot along Montgomery Lane and two and a half feet along West Lane, but the exact final width of West Lane and the total areas to be dedicated will be determined during the subdivision and site plan process.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the TS-R Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Sector Plan and other County Policies.

The first required finding is consistency with the use and density requirements of the Sector Plan and with other County plans and policies. The subject site is located within the Transit Station Residential District of the Bethesda CBD Sector Plan, approved and adopted in 1994. Technical Staff provided a very thorough discussion of the Sector Plan’s application to this case in their report (Exhibit 37, pp. 14-18). Staff’s conclusion is that “The proposed development is consistent with the Bethesda CBD Sector Plan.” Exhibit 37, p. 1. The Planning Board agreed, stating, “The Planning Board finds that the rezoning application is consistent with the Sector Plan for the Bethesda Central Business District (CBD).” Exhibit 42, p. 1. The Board added (Exhibit 42, p. 2),

The Planning Board recognizes the importance of the rezoning as it sets forth the land use and zoning recommendations contained in the Sector plan for the surrounding community. This rezoning is part of the Sector Plan’s broad vision to provide an urban village in the Bethesda CBD that creates attractive land uses, encourages social interaction and promotes community identity.

As discussed by Staff, Sector Plan objectives include stepping down building heights from the Metro Center to adjacent areas, clearly identifying a building’s entrance in the façade design, locating the entrance at street level and applying the TS-R Zone flexibly so as “. . . to allow the district to achieve a low rise, high density ‘urban village’ pattern.” Sector Plan, p. 80. This project is consistent with those goals. Exhibit 37, p. 14.

Although the proposed building fails to achieve the density of at least 45 dwelling units per acre recommended in the Sector Plan, Technical Staff found the density of 27 dwelling units per acre proposed here to be acceptable because the building will be “consistent with other nearby residential uses of comparable heights less than 65 feet that have been developed with densities between 24 to 36 dwelling units per acre.” Exhibit 37, p. 15. Staff also noted that the proposed height provides a transition between the taller TS-R developments abutting to the east and that of the townhouses to the west along Arlington Road, and it is consistent with “step

*down building heights*” illustrated on page 42 of the Plan. The proposed floor area ratio (FAR) of 2.5 is consistent with the Sector Plan recommendations and utilizes the full FAR permitted in the TS-R zone.

Staff also found that the private and public open space to be provided on the site appears to be consistent with the Sector Plan, and those features will be addressed at Site Plan review.

In discussing the Urban Design Guidelines contained in the Sector Plan, Staff observed that the TS-R Zone’s restriction on lot sizes to a minimum of 18,000 square feet had been relaxed by Zoning Text Amendment (ZTA) 12-08, which permits smaller lots, such as the subject site, to be more easily classified in the TS-R Zone. The project is consistent with the goals of the other design guidelines, which encourage low-rise buildings, setbacks consistent with the urban form, projection of a residential image through architectural design, encouraging street life by placing the entrances on the street side, and locating parking so that it is less visible from the street.

Finally, Staff noted that the project will be consistent with the Sector Plan’s guidance in that the small building will contribute to the “fine-grain” of the neighborhood. Exhibit 37, p. 18. The Hearing Examiner agreed with Technical Staff and the Planning Board, and found that this project is in substantial compliance with the zoning, land use, density and design recommendations of the Bethesda CBD Sector Plan. The District Council concurs and so finds.

Moreover, The Development Plan specifies that “This project is not related to any County Capital Improvement Program (CIP).” Exhibit 60(a). The Hearing Examiner found, and the District Council agrees, that the proposed development is consistent with the General Plan and does not impact the County’s Capital Improvements Program.

Under the County’s Adequate Public Facilities Ordinance (APFO, Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board’s application of the APFO is limited by parameters that the County Council sets in its Growth Policy.<sup>3</sup> While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council’s determination in a rezoning case as to whether the reclassification would serve the public interest.

The Planning Board considers the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated. There is no such evidence in this case. On the contrary, the evidence is that both police and fire stations are nearby. Tr. 90 and Exhibit 37, p. 14. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in the Hearing Examiner’s report. For the reasons stated therein and summarized below, the District

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<sup>3</sup> In 2010, the Council changed the name of the Growth Policy to the Subdivision Staging Policy, but both Zoning Ordinance §59-H- 2.4(f) and APFO Code §50-35(k)) still refer to the Council’s Growth Policy.

Council finds that the proposed development will not unduly burden the County's public facilities.

### 1. Transportation

Montgomery Lane is one lane westbound between Woodmont Avenue and West Lane, and two lanes of traffic (eastbound and westbound) between West Lane and Arlington Road. There is no parking allowed on Montgomery Lane east of Arlington Road up to the subject site. Just east of the site frontage, there are two parallel spaces on the north side and curbside parking on the south side, amounting to a total of six to seven spaces. There is a two-hour posted time limit on the spaces. No parking is allowed along West Lane. Tr. 104-105

Applicant's transportation planner, Craig Hedberg, and Technical Staff agreed regarding impacts on transportation facilities from this project. There is an existing one-family unit on site which would be replaced by the four proposed condominium units. The trip generation comparison indicates that there would be one additional peak hour trip beyond what is currently generated by the single unit on the site. That is well within that 30-trip criteria, below which a full traffic study is not required under Local Area Transportation Review (LATR) regulations. The site will also generate fewer than three peak-hour trips, and therefore no Policy Area Mobility Review (PAMR) restrictions come into effect. Tr. 106-107.

In Mr. Hedberg's professional opinion as a transportation planner, the proposed rezoning will not adversely impact the surrounding area from the standpoint of traffic and traffic conditions. These are very low volume streets because West Lane itself is a cul-de-sac. With only westbound traffic allowed on Montgomery Lane up to West Lane, there is not going to be traffic heading towards the CBD on Montgomery Lane. Mr. Hedberg also opined that the transportation-related public facilities are adequate to accommodate this rezoning application. "They'll virtually be an imperceptible impact on the traffic situation in conjunction with this redevelopment." Tr. 107-108.

Technical Staff reached the same conclusions as Mr. Hedberg regarding LATR and PAMR (Exhibit 37, pp. 18-20). Staff also noted Applicant is proposing to dedicate frontage along both Montgomery and West Lanes, and that at the time of future approvals, other transportation issues will be reviewed in more detail.

The District Council concludes that there is sufficient evidence at this stage that transportation facilities will be adequate for this project.

### 2. School Capacity:

The subject property is located in the Bethesda-Chevy Chase (B-CC) Cluster, which consists of Bethesda Elementary School, Westland Middle School, and Bethesda-Chevy Chase High School. Technical Staff reports that the proposed development is expected to generate one elementary school student, one middle school student and one high school student. Exhibit 37, p. 14. Bruce H. Crispell, Director of the Division of Long-Range Planning, Montgomery County Public Schools (MCPS), stated in an e-mail to Technical Staff dated August 3, 2012 (Attachment



B to Exhibit 37) that a new school test for FY 2013 was accepted by the Planning Board and became effective on July 1, 2012. This new test reflects the County Council's action on MCPS's FY 2013-2018 Capital Improvements Program (CIP). Funding is now included for several elementary school additions and a new middle school in the B-CC Cluster.

According to Mr. Crispell, based on the FY 2013 school test, the elementary and middle schools within the B-CC cluster are not in a moratorium and no school facility payment is required. At the high school level, B-CC High School is projected to be over capacity by close to 500 students by 2017. A feasibility study for an addition will be conducted this year and a request for design and construction funds will be included in a future CIP. In order to avoid a development moratorium, the County Council put a "placeholder" capital project in the adopted FY 2013-2018 CIP which keeps the B-CC Cluster out of moratorium in FY 2013, but requires a school facility payment at the high school level for subdivision approvals in FY 2013.

Given this record, the District Council finds that Applicant has demonstrated a reasonable probability that available school facilities will be adequate to serve the proposed development.

### 3. Water Service, Sewer Service:

Technical Staff reports that the subject site is served by existing sewer and water mains, and is currently in Water Service Category W-1 and Sewer Service Category S-1. Ex. 37, p. 13.

Applicant's civil engineer, Curt Schreffler, testified that public utilities are available immediately in front of and adjacent to the site, with the exception of the storm drain extension, which Applicant will add to serve the site. Tr. 40.

The Hearing Examiner found that, although more detail will be produced at subdivision, Applicant has sufficiently demonstrated the adequacy of public facilities at the rezoning stage. Based on this record, the District Council agrees and so finds.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

The requirements for the TS-R Zone are found in Code §59-C-8. The TS-R Zone is a "floating zone," intended generally to be used in Transit Station Development Areas. Section 59-C-8.21(b) specifies that the TS-R Zone is intended for locations where multiple-family residential development already exists or where such development is recommended by an approved and adopted master. That is the case here.

In accordance with Zoning Ordinance §59-C-8.21(d), the District Council finds the development plan to be consistent with the requirements of the Zoning Ordinance. Based on the ample evidence in the record, the District Council also finds, as did Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-R Zone, as set forth in Code §59-C-8.22. The proposed development will promote the effective use of the Bethesda Metrorail Station by adding new residential uses within walking distance of this station. This project proposes a residential density of 27 units per acre, thereby offering choices to match the diverse characteristics of housing found within the Bethesda CBD. The density for the subject site, (27 dwelling units per acre) is within the range of 24 to 36 dwellings per acre approved for other low-rise residential uses developed in the surrounding area. The building when constructed will conform to the Sector Plan recommendation of a 65 foot building height, and other nearby low-rise residential uses developed under the TS-R zone have comparable heights. The proposed building has been designed to incorporate the flexible setbacks of the TS-R zone. With a building placed closer to the street, the creation of new public use space along Montgomery Lane, and a proposed building height comparable to the surrounding existing and proposed residential developments, this project provides a coordinated, harmonious and systematic development of this area as envisioned by the Sector Plan.

Zoning Ordinance §59-C-8.24 provides that the TS-R Zone is “permitted only in a Transit Station Development Area defined in section 59-A-2.1 and in accordance with an approved and adopted master plan or sector plan . . . [with exceptions not relevant here].” The subject site is within a Transit Station Development Area as defined in Section 59-A-2.1 and is in accord with the Sector Plan.

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-R Zone conform to “the facilities and amenities” of the Sector Plan, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use. The requirements mentioned in this provision are duplicated by the specific findings required of the Council, and they will be discussed below in connection with the other specific findings.

Zoning Ordinance §59-C-8.3 specifies the uses permitted in the TS-R Zone. The use proposed for this project (multi-family residential) is permitted in the TS-R Zone.

The remaining requirements of the TS-R Zone are spelled out in Code Section 59-C-8.4, which prescribes development standards. Those standards are set forth in the Hearing Examiner’s report. The proposed development meets those standards, and the District Council finds that Applicant’s development plans are in accordance with all of the purposes, standards and regulations of the TS-R Zone, as set forth in Article 59-C of the Code.

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” As stated by Technical Staff (Exhibit 37, pp. 25-26),

. . . This proposal provides open space amenities to residents of the development. The site's location within the Bethesda CBD offers the convenience of CBD shopping choices and transportation choices via the Bethesda Metrorail station to future residents. This proposal has been designed for the maximum safety of the future residents.

The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. Applicant's land planner, Bill Landfair, opined that the proposed building would be compatible with adjacent developments (Tr. 84-85), and Technical Staff observed that ". . . the proposed building will be compatible with the existing and approved adjacent development in terms of height and use." Exhibit 37, p. 25. There is no contrary evidence. Based on this record, the District Council finds Applicant's Development Plan to be compatible with adjacent development.

§59-D-1.61(c): safe, adequate & efficient internal vehicular and pedestrian circulation systems.

The third required finding is "[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient."

Technical Staff found that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate, and efficient (Exhibit 37, p. 26):

The submitted development plan proposes pedestrian circulation along the site's property lines. Public sidewalks along the Montgomery Lane and West Lane will provide access that is efficient and adequate for internal and external pedestrian movement patterns of future residents. Internal access is provided by a walkway along the site's eastern and northern property lines. This walkway will offer future residents safe, adequate and efficient means to move around the property. The existing public sidewalk along Montgomery Lane will be upgraded to align with the existing sidewalk in front of the 10-story multi-family building to the east. Currently, there is no sidewalk along West Lane. The development plan proposes a sidewalk in this location to supply a missing link in the existing pedestrian circulation system and increase pedestrian safety in this location.

The vehicular access points along West Lane have been designed to minimize pedestrian and vehicular conflicts by clearly delineating each unit's driveway (access point) from the proposed sidewalk. This delineation will include a different paving material for the sidewalk to highlight pedestrian movements in this location. As proposed, the internal vehicular and pedestrian circulation systems are adequate and promote safe and efficient movements for pedestrians and vehicles using this site.

Based on the entire record, the District Council finds that external access and internal circulation will be safe, adequate and efficient for both vehicular and pedestrian traffic.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources.

As previously mentioned, the site is not located in a Special Protection Area or Primary Management Area, and does not contain any forest, streams, steep slopes, buffers or flood plains. There is one 32-inch, silver maple specimen tree currently on the site, but it is in poor condition. There are no other environmental issues. In the expert opinion of Applicant's civil engineer, there will be no adverse impact on the surrounding area from the standpoint of stormwater runoff drainage, stormwater management or sediment control. A stormwater management concept plan has been approved by the Department of Permitting Services for this site (Exhibit 47), and stormwater management will be reviewed at subdivision. Moreover, the entire site will be stabilized and landscaped, and new streetscaping and street trees will be added in the public right-of-way. Because the site is so small and already developed, there is no natural vegetation that can be preserved. Tr. 46.

Technical Staff confirms in its report that "The site does not contain any environmentally sensitive features as defined by the Planning Board's Approved Environmental Guidelines (2000)." Exhibit 37, p. 20. Staff also noted that the property is exempt from the forest conservation requirements due to its small size, but at the time of future approvals, a tree save plan will be needed to specify mitigation measures for the removal of the maple tree and to address any construction impacts to nearby offsite trees. Exhibit 37, p. 26.

In sum, the District Council finds that Applicant has demonstrated the environmental controls required by "Finding (d)."

§59-D-1.61(e): common area maintenance.

The fifth required finding is "[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient."

As described in the Hearing Examiner's report, Applicant, 4825 Montgomery Lane, LLC, has demonstrated its ownership of the subject site. It has also submitted an "Outline for the Perpetual Maintenance Obligations of Common Area and Quasi-Public Use Space for the 4825 Montgomery Lane Condominium Association," which gives assurances of perpetual maintenance in all areas intended to be used for recreational or other common or quasi-public purposes. Exhibit 5(a).

The District Council finds that Applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The Applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. As stated in the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012),

*(i) planning, zoning, or subdivision control powers in the regional district [must be exercised to:]*

*(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;*

*(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and*

*(3) protect and promote the public health, safety, and welfare.<sup>4</sup>*

When evaluating the public interest, the District Council normally considers Master or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of housing near a Metro station.

As outlined above, Applicant's proposal is consistent with the recommendations, goals and objectives of the 1994 Bethesda CBD Sector Plan. The Planning Board and its Technical Staff supported the proposed rezoning. Exhibits 37 and 42. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development. The proposed project will bring an attractive residential development within walking distance of a Metro Station, and will provide streetscape improvements. The only opposition to this project comes from a neighbor concerned about the adequacy of parking, and it is uncontroverted in the record that Applicant will provide all the required parking spaces. The project has been supported by other neighbors. *See* Exhibits 40 and 41.

For the reasons discussed above, the District Council concludes that the proposed development would be in the public interest.

## **Conclusion**

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the TS-R Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-R Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

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<sup>4</sup> Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new "Land Use Article." Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-908, requesting reclassification from the R-60 Zone to the TS-R Zone of approximately 6,525 square feet of land described as Lot 20, Block 13A in the Edgemoor Subdivision of Bethesda, and located at 4825 Montgomery Lane, in the 7<sup>th</sup> Election District, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 60(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Linda M. Lauer".

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Linda M. Lauer, Clerk of the Council